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REVISING CERTAIN PROVISIONS RELATING TO THE PROMOTION AND INVOLUNTARY RETIREMENT OF OFFICERS OF THE REGU- LAR COMPONENTS OF THE ARMED FORCES

JULY 23, 1959.—Ordered to be printed

Mr. STENNIS, from the Committee on Armed Services, submitted the following

R E P O R T

[To accompany S. 1795]

The Committee on Armed Services to whom was referred the bill (S. 1795), to amend title 10, United States Code, to revise certain provisions relating to the promotion and involuntary retirement of officers of the regular components of the Armed Forces, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

AMENDMENTS TO THE BILL

On page 3, line 8, strike the words "in the grade of colonel or captain, as the case may be,".

On page 4, between lines 13 and 14, in the fourth column of new formula 5 to be added to section 1401 of title 10, United States Code, strike the words "in computing basic pay," and insert in lieu thereof "under section 1405³".

EXPLANATION OF AMENDMENTS

The purpose of the amendment on page 3 is to provide that at least 80 percent of the twice failed lieutenant colonels or commanders and in the case of certain female officers, majors and lieutenant com-

manders considered by a particular board will be continued on the active list. The authority to retire 20 percent of any group considered by a given board appears ample to meet the needs of the services for quality control purposes based upon the testimony received by the committee. The 80 percent limitation on the twice failed lieutenant colonels and commanders and certain female majors and lieutenant commanders is identical to that already contained in the bill for officers in the grade of colonel or captain who twice failed of selection to the next higher grade.

The change on page 4 is technical. It is a conforming amendment in order to properly refer to the newly numbered formula authorizing retired pay for those retired under the provisions of the bill.

BASIC PURPOSE OF LEGISLATION

The basic purpose of this bill is to provide certain "quality control" authority for the management of regular officer personnel in the military departments. This measure will supplement existing authority. The bill, as indicated below, amends existing law with respect to two major areas—(1) the involuntary retirement of certain Regular officers in the permanent grades of colonel, lieutenant colonel, female major, and equivalent ranks, and (2) certain changes with respect to the permanent promotions in the Army and Air Force which will make more competitive advancements to the permanent grade of major and lieutenant colonel and at the same time permit selections from below the permanent promotion zone for outstanding officers.

The involuntary retirement authority, which is more fully explained hereinafter, might be summarized as follows.

Under existing law Regular officers in the Army and Air Force who have twice failed of selection for promotion to the permanent grade of colonel remain on active duty until the completion of 28 years of service and colonels who have twice failed of selection for promotion to brigadier general remain on active duty for 30 years. Equivalent officers in the Navy and Marine Corps remain on duty for 26 and 30 years respectively. Permanent lieutenant colonels are presently being twice failed to the next higher permanent grade in the Air Force at an average of 20 years of service and in the Army at 25–26 years. Twice failure for promotion to brigadier general presently occurs in the Air Force at about the 25th year of service and in the Army at about the 27th year. All of the officers who would be retired involuntarily must have completed at least 20 years of service for retirement purposes and, therefore, would be entitled to retired pay. The bill in effect provides discretionary authority whereby officers in these two grades who failed at least twice for promotion to permanent rank could be selectively retired prior to completing the full 28 or 30 years respectively.

It should be noted that in the Army and Air Force officers below the grade of permanent lieutenant colonel who twice failed of promotion to the next higher grade are either discharged with severance pay or, if qualified, retired.

It is the position of the Department of Defense that the various retirement points of 26, 28, and 30 years of service for the twice-failed

officer operate in some cases to keep on the active list some officers whose performance in the grades concerned does not equal the potential expected of them when they were promoted.

BACKGROUND

The proposed legislation stems from the studies and recommendations of the Cordiner Committee. That Committee stressed the need for additional authority for involuntary retirement of officers in the permanent grades of lieutenant colonel, colonel, and equivalent ranks, whose performance of duty did not measure up to the high quality standards required. Further, the Committee had urged that in light of the substantial increases in pay for the higher grades there should be a corresponding emphasis on measures to insure that only officers of the highest quality and potential were promoted to and retained in these higher grades.

PURPOSES FOR WHICH THE AUTHORITY OF THE BILL WOULD NOT BE USED

The Department of Defense has stated unequivocally that this bill will not be used to eliminate officers from the active list for the purpose of creating vacancies for promotion or for the elimination of Regular officers from the active list due to any reduction in the size of the Armed Forces.

AUTHORITY FOR INVOLUNTARY RETIREMENT FOR CERTAIN REGULAR OFFICERS

The bill establishes another procedure less restricting than existing law for involuntarily retiring the least effective officers in the permanent grades of colonel and lieutenant colonel and equivalent grades who have twice failed of selection to the next higher permanent grade. It also provides a similar authority with respect to the women's services for the retirement of certain officers in the permanent grade of major and lieutenant commander who have twice failed of selection to the next higher grade. Similar authority is also extended to the Navy and Marine Corps, thereby establishing uniform procedure in the personnel management area. The bill establishes permissive authority whereby the service Secretaries could appoint continuation boards composed of five members, all of flag or general rank. These boards would review the records of the following categories of Regular officers who had completed 20 years of service for retirement purposes and who have been considered at least twice but not recommended for promotion to the next higher grade: (1) colonels or captains; (2) lieutenant colonels or commanders; (3) majors or lieutenant commanders, in the case of certain female officers. The number of records reviewed by the boards would be determined by the Secretaries.

There are certain other aspects of the authority the bill would provide which should be noted:

(1) Under the terms of the bill there is no limit on the number of times that the records of officers concerned may be reviewed. This is because there may be, in the judgment of the board, borderline cases which the board may desire to reexamine at a later date to evaluate the officer's quality of duty performance at that time. In the absence

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of such authority, a board might feel compelled to recommend for involuntary retirement an officer who might otherwise be afforded an opportunity to improve his duty performance.

(2) The bill does not specifically require the establishment of continuation zones from among the twice-failed officers on the permanent list. In practice, it is expected that all officers in the grades concerned who failed of selection at least twice will be reviewed. However, the Secretaries would have the discretion as to whether they would be reviewed at the same time or whether to establish continuation zones. If these zones were to be established they would, of course, be in order of seniority. In general, the senior twice-failed officer would be designated as a top man in the zone and a cutoff point below him would be established.

(3) The bill expressly provides that the Secretaries may specify separate numbers for particular categories of officers who may be non-continued. This is necessary to provide flexibility with respect to differing requirements for officers with different skills. For example, officers in some of the professional corps might well be given a different percentage, either more or less, of retention than those established for officers in the other arms and services. It should be emphasized that no officer would be noncontinued solely on the basis of his having or not having a particular skill. Rather, it is intended that this skill would be a factor in determining whether his overall performance justified his retention on active duty.

Number who would be continued on active duty

With respect to the twice-failed colonels, lieutenant colonels, certain female majors and officers in equivalent ranks, the service Secretaries would be authorized under the bill to specify to the board the number who would be continued on active duty but this number must be at least 80 percent of those being considered for continuation. The boards would select the number specified and the remaining percentage would be retired not later than 6 months after the Secretary approved the report of the board.

RELATIONSHIP OF BILL TO EXISTING LAW

As indicated below, there are considerable periods of time which twice failed officers continue to serve before reaching their normal points of retirement. This legislation will in effect permit the elimination from the active list by mandatory retirement of those officers in these grades whose effectiveness does not justify their retention on active duty.

A Regular officer is retired or eliminated from the active list under existing law for one of two reasons: (1) nonselection to the next higher grade, or (2) in the case of the Army and Air Force, through "show cause" proceedings. This legislation supplements these two procedures by providing a third alternative. The following comments relate the existing procedures to the purposes of the pending legislation.

Nonselection to next higher grade

In the Army and Air Force, Regular officers who are twice failed of selection to the grades of captain, major, and lieutenant colonel are eliminated from the active list after they have twice failed of selection.

They would be eliminated with severance pay except in those cases where they are eligible for retired pay based on at least 20 years of service.

An officer who has been promoted to the permanent grade of lieutenant colonel in the Army and Air Force may remain on active duty until he has completed 28 years of service, even though he may have twice failed of selection to permanent colonel. Officers in the grade of permanent lieutenant colonel, therefore, will normally remain on active duty until they have completed 28 years of service. At the present time Regular lieutenant colonels in the Air Force are being twice failed for promotion to permanent colonel at an average of 20 years of service; in the Army, 26 years of service.

For the grade of permanent brigadier general, officers are being twice failed for promotion to this grade in the Air Force at about their 25th year of service and in the Army at about their 27th year of service. Officers in the grade of permanent colonel in both the Army and Air Force remain on active duty until they have 30 years of service. Non-selection, therefore, to the permanent grades of colonel and brigadier general do not operate to eliminate officers from the active list except after the completion of 28 years of service for the twice-failed lieutenant colonels and 30 years for the twice-failed colonels.

This situation likewise prevails with respect to the Navy and Marine Corps, since existing law requires that officers in the permanent grade of commander in the Navy and lieutenant colonel in the Marine Corps be retained until they have completed 26 years of service, regardless of the number of times they have been considered but not selected for promotion to the next higher grade. Similarly, Regular Navy captains and Marine Corps colonels must be retained until they have completed 30 years of service.

Number of twice failed officers presently in the services

In the Army there is presently a total of 971 colonels who have twice failed of selection to the permanent grade of brigadier general and 291 lieutenant colonels who have twice failed of selection to the permanent grade of colonel. In the Air Force there are about 800 Regular colonels who have twice failed of selection to the grade of brigadier general and about 1,500 permanent lieutenant colonels who have twice failed of selection to the next higher permanent grade.

Show-cause procedure

Under existing law for the Army and Air Force there is authority to effect the involuntary separation or retirement of Regular officers from the active list, including colonels, lieutenant colonels, and majors with more than 20 years of service. This authority is known as the show-cause procedure whereby there is an annual screening of all the records of the Regular officers by a general officer board which may thereafter require any officer to show cause why he should be retained on active duty. A board of inquiry consisting of at least three general officers considers the evidence and makes the recommendations as to the officer's fitness to be retained. The officer selected to show cause must be accorded a fair and impartial hearing before the board. If the board of inquiry recommends the removal of the officer, the case is then referred to a board of review of at least five general officers. If this latter board recommends against retention, this recommenda-

tion is again transmitted to the Secretary who may take such action as he desires. The Secretary's action is final and conclusive.

With respect to the Navy and Marine Corps, after a Regular officer has completed 20 years of service, there are no statutory procedures whereby this officer may be eliminated from the active list. Only after he has completed the normal retirement point for his grade is he removed from the active list and retired.

Distinction of bill from show-cause procedure

The Department of Defense is of the opinion that the authority which would be provided by this bill is necessary and desirable to augment existing authority and procedures. The present show-cause procedure is not always effective in reaching the marginal officer. In addition, the show-cause procedure is associated in the minds of many officers with factors other than quality of duty performance. Moreover, the bill will provide the same permissive authority for the Navy and Marine Corps, as would be provided for the Army and Air Force, thus establishing for the first time a uniform authority for services in this important aspect of career officer personnel management. In practical effect the bill to a degree extends to the grades of lieutenant colonel and colonel the present concepts covering promotion and retirement or separation of officers in the lower grades.

USE OF THE INVOLUNTARY RETIREMENT AUTHORITY BILL BY THE
MILITARY DEPARTMENTS

The Army considers that the legislation is useful as permissive authority. It has no plans for its immediate implementation and will continue to rely on the show-cause procedures for the present time. The Air Force indicates that the involuntary retirement feature of the legislation will be implemented as soon as practicable.

The Navy and Marine Corps do not plan to use this legislation over at least the next 5-year period since any noneffective officers would be mandatorily retired under the authority of separate pending legislation, H.R. 4413, known as the Navy hump bill. This latter legislation will eliminate officers in the grade of captain and colonel, and commander and lieutenant colonel, in far greater numbers than are required to meet any quality control problem.

As a technical matter in the Navy, Regular captains are not twice failed of selection to rear admiral until about the 30th year of service. Most Navy captains, therefore, would not be within the terms of the legislation. The Navy hump legislation authorizes the retirement of captains who have completed 5 years of service in the grade. This latter provision, which would result in retiring the lower 35 percent of the officers with the least potential in the year groups concerned over the next 10-year period is necessary in order to create the required vacancies.

The commanders who will be retired will be those twice failed of selection to captain. The number which will equal about 45 percent of those twice failed in the year group concerned will exceed the requirement for quality control of this particular category. The greater percentage will be eliminated because of the necessity for the urgent requirement in the Navy to create additional vacancies and thereby retain for further service a greater percentage of the young Regular

naval officers in the hump by year groups who would otherwise retire in their present rank.

RETIRED PAY FOR NONCONTINUED OFFICERS

Under the terms of this bill, in order for a Regular officer to be subject to noncontinuation and subsequent involuntary retirement, he must among other things have 20 years of service for retirement purposes. All officers, therefore, who would be removed from the active list would be retired and none would be eliminated with severance pay. It should be emphasized, however, that the amount of retired pay would be that which was creditable to them under the present provisions of law. No additional compensation is provided in the bill.

NO RELATIONSHIP OF LEGISLATION TO TEMPORARY PROMOTION SYSTEM

This legislation would subject Regular Army and Air Force twice-failed lieutenant colonels and colonels to involuntary retirement only after they had twice failed of selection for permanent promotion to the next higher grade. The bill does not attach any penalty to nonselection of temporary promotion. It is the position of the Department of Defense that the personnel management problems resulting from nonfailure of temporary promotions can be handled administratively under existing law. For example, in the Army and Air Force, officers may be reduced administratively from their temporary rank to their lower permanent rank. In the Air Force over the 1-year period from October 1957 to October 1958, 650 officers were considered for demotions, and out of this number 139 were demoted by October of 1958. The Army has no administrative demotion policy. On the other hand, the records of all Regular officers who are twice passed over for temporary promotion are reviewed to determine whether they are fully qualified for promotion but could not be selected due to lack of vacancies and thus should be retained on active duty, or whether they should be required to "show cause" under present statutory proceedings.

PROMOTION FEATURES OF THE LEGISLATION

Required use of best qualified system for selection to permanent grade of major and lieutenant colonel

Under existing law, selections to the grade of major and lieutenant colonel are on the basis of either the fully qualified system or the best qualified system. Under the fully qualified method, the officers within the zone are required only to meet the minimum standards required for promotion, and there is no competition between officers in the zone for selection. Under the best qualified system, however, the officers within the zone could compete among themselves for a number of vacancies which is less than the number of officers being considered. Current law, however, requires that when the best qualified system is used, the Secretaries must require that at least 80 percent of all those considered be recommended for selection.

Except for the selection of certain female officers to the permanent grade of major, the bill requires the use of the best qualified system

for selections to the permanent grade of major and lieutenant colonel in the Army and the Air Force. Existing law already requires the use of the best qualified system for promotion to colonel and above. This revision further amends existing law. The 80 percent now required for selection includes not only those being considered for the first time in the primary zone, but those already passed over one time from previous selections. The bill would require that the 80 percent be based upon the number who are being considered for selection for the first time. The effect would be that those officers already once failed would have to compete for selection within the numbers based on those in the zone for the first time. Existing law with respect to the Navy and Marine Corps requires the use of "best fitted" for selection to the equivalent grades of lieutenant commander and commander. The best fitted system is the equivalent of the best qualified system in the Army and Air Force. The bill would therefore make uniform for all services the mandatory use of the best qualified or best fitted system for permanent promotions to the grades of major and lieutenant colonel or equivalent.

Authority to select 5 percent of the officers from below the zone

Under existing law all permanent promotions to the grade of captain, major, and lieutenant colonel in the Army and Air Force must be made from those who are within the promotion zone. The promotion zones themselves, because of the nature of the permanent promotion list, are established on the basis of seniority. For the officers in the particular grade being considered for promotion, there is no authority under present law to select an officer of outstanding ability who is not within the promotion zone because of lack of seniority.

The bill provides that the Secretaries of the Army and Air Force may specify that the boards select up to 5 percent of the number selected from among those officers below the zone of consideration. The effect would be that these officers would be promoted ahead of their contemporaries because of their outstanding qualities.

The Navy and Marine Corps presently possess authority for the 5 percent selections.

It should be emphasized that in the Army and Air Force there are no required minimum statutory periods of service in the permanent grade of first lieutenant, captain, and major for consideration to promotion to the next higher grade. It would therefore be possible with respect to the use of the below-the-zone selection authority to select an officer for promotion to the next higher permanent grade who had only served in his current grade for a short period of time. As a matter of practice, however, the military services anticipate that a secondary zone would be established from which the 5 percent below-the-zone selections could be made. The secondary zone would also be based on certain minimum service requirements in order to insure the requisite maturity and experience on the part of officers selected.

It might also be noted that the effect of below-the-zone selections is not too great so long as the temporary promotions are made in advance of permanent promotions. Under such circumstances, the permanent promotion received by an officer does not involve a grade change since he already holds a higher temporary rank. The present situation of Regular officers holding higher temporary ranks is not expected to continue in all grades, especially to the grade of major.

Less emphasis on seniority for promotion

The bill makes a number of language changes which will serve to minimize the importance of seniority and emphasize ability and efficiency as a basis for promotion. These are:

(1) Changes are made in the present law with regard to temporary promotion in the Army and Air Force. Existing law requires that temporary selection for promotion in the Army and Air Force be based on ability and efficiency with regard being given to seniority and age. The bill deletes the reference with respect to seniority and age with the result that the amended provisions would require that selections be based on ability and efficiency.

(2) Existing law with regard to permanent promotions in the Army and Air Force is silent with regard to standards to be used by selection boards. The bill adds language requiring that selections be based upon ability and efficiency with the result the standards would be identical for both permanent and temporary promotions.

(3) Existing law with respect to the Navy and Marine Corps makes no reference to the standards for promotion other than the requirement of the use of the best fitted system. The bill adds language requiring that any promotions be based upon the ability and efficiency of the officer concerned.

No breach of faith

This legislation raises the question of whether its enactment could be regarded as a breach of faith to the detriment of those officers now in service, particularly those who would be subject to involuntary retirement prior to completing their normal periods of service.

It is the view of the Department of Defense that this legislation does not constitute a breach of faith with respect to officers who might consider themselves adversely affected by its provisions. The military services over many years have sought and obtained changes in the laws regarding their personnel policies with a view toward improving the forces and of meeting changing times and conditions. Changes have been made over a number of years in both the retirement systems and the promotion systems in order to meet the needs of the services. Whenever such changes are made, it could be argued that certain individuals would have greater benefits under the older system than under the new. Conversely many of the required changes also provide greater benefits and opportunity for those affected. With respect to recent changes, it might be noted that the Officer Personnel Act of 1947 made the promotion system in the Army and Air Force more competitive through the creation of a selection system and at the same time shortened the years for mandatory retirement. Prior to this legislation, senior officers could remain on duty until at least age 60, and promotion through the grade of lieutenant colonel was by seniority alone. With its enactment, officers in the grade of lieutenant colonel were retired after 28 years of service, and colonels after 30 years of service with 5 years in grade. With respect to meeting the needs of the service, it might be noted that even in time of war it has been found necessary to change laws in order to provide added authority for the involuntary removal of officers from the Regular Army because of

unfitness in various ways to retain their active status. This situation occurred in 1941 when Congress enacted legislation authorizing the involuntary removal of Regular officers from the active list.

In support of the bill to meet the needs of the military departments, the following Department of Defense testimony is important:

As to whether enactment of S. 1795 might operate to lessen the security incentive aspect of a military career, the Department of Defense is confident that this will not be the case. With the recently enacted military pay bill, levels of pay have been provided for the higher grades which careerwise offer a significant financial incentive. Greater emphasis has been placed on achievement and less on the total number of years a person has been in service. The kind of officer the services are seeking to attract has confidence in his ability and is more than willing to have his future success depend on his ability, hard work, and initiative. He wants the opportunity to advance on his merits and to receive recognition on the basis of performance rather than length of time in service. He does not place reliance on "security" by making it the sole or even major consideration in his choice of a career. We believe that he will willingly accept the stiffer career competition implicit in this bill.

SECTIONAL ANALYSIS

Section 1. Authority to establish continuation boards.

Section 1, clause (1), adds a new section (sec. 1294) to title 10, United States Code. This new section would authorize in each of the military departments the establishment of continuation boards.

(a) *Membership of board and Regular officers subject to continuation.*— This subsection provides that not more than once each fiscal year the Secretary of a military department may convene one or more boards to recommend for continuation on the active list the following categories of Regular officers who must have had 20 or more years of service for retirement purposes and have been considered at least twice but not recommended for promotion to the next higher permanent grade:

- (1) Colonels or captains;
- (2) Lieutenant colonels or commanders;
- (3) Majors or lieutenant commanders in the case of certain female officers.

The female officers who would be affected by this special provision are the Regular female officers in the grade of major or equivalent who under present law remain on active duty for 25 years of service even though they have been twice failed of selection to the next higher permanent grade. The twice-failed female majors in the other categories are either eliminated with severance pay prior to completing 20 years of service or retired upon completing 20 years of service.

The Department recommended that the failed-twice majors in the 25-year category be subject to continuation since an inequity would otherwise result with respect to both the male and female officers in the higher permanent grade of lieutenant colonel who are subject to

continuation since all twice-failed permanent lieutenant colonels with 20 years of service are subject to continuation. There could result without this special provision instances where such lieutenant colonels would be eliminated at 22 or 23 years of service, whereas, the female major officers in question would remain on duty for 25 years.

This subsection requires that the continuation boards be composed of at least five regular officers of general or flag rank.

(b) *Number who may be continued on the active list.*—This subsection authorizes the Secretary to specify to the board the number of officers to be continued on active duty but requires that the Secretary specify the continuation of at least 80 percent of the officers under consideration.

This subsection also authorizes the Secretary to specify separate numbers for particular categories of officers. The effect of this authority would be that the Secretary could specify, with respect to particular types of officers, that either a greater or lesser number be continued on the active list.

(c) *Retirement for each officer not recommended for continuation.*—This subsection provides that officers not recommended by the board for continuation will be retired not later than 6 months after the Secretary's approval of a board action.

(d) *Exception for board membership in female officers.*—This subsection provides exception to the provision requiring that all members of continuation boards be of general or flag rank. It provides that continuation boards considering female officers may include a woman officer of the same service senior to the woman officers under consideration. There are no female officers of general and flag rank.

(e) *Application of present procedural provisions to naval continuation boards.*—This subsection extends to the Navy continuation boards certain procedural provisions of current law applicable to naval selection boards.

Section 2. Retired pay formula for noncontinued officers

Section 2, along with section 3, provides the retired pay formula for officers who would be selected for noncontinuation. In effect these provisions provide for retired pay based on the service creditable to the officer concerned under current law at the time of his retirement. No additional retired pay in any form would be authorized. Technically, the provision provides that officers retired under the new section 1294 of the code would have their retired pay based on their active duty pay, multiplied by 2½ percent of the number of years of creditable service. The retired pay would be not less than 50 percent and not more than 75 percent of the active duty basic pay of his grade.

Section 3. Technical conforming provision

Section 3 is a technical provision which would amend existing retirement provisions by incorporating in section 1405 of title 10, United States Code, the newly authorized formula referred to in section 2 of the bill.

Present section 1405, title 10, United States Code, defines the "years of service" that members of the Armed Forces may use in computing their retired pay. The persons retired under this bill would also have present law apply to them.

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In computing retired pay section 1405 of title 10 defines the years of service creditable as follows:

(1) years of active service; (2) years of service, including constructive service, service credited to medical and dental officers for their professional education; (3) years of active and Reserve service for officers who served in the Reserve prior to June 1, 1958 (the effective date of the pay bill); (4) years of active service and Reserve service credited to the rate of one point for each day of active service, or for each drill attended (360 points are required for 1 year's credit), for those officers who serve in the Reserve after June 1, 1958, but not on extended active duty.

Section 4. Changes in promotion law

Section 4 in amending the current provisions applicable to Regular Army promotions, as indicated below, makes a number of changes in the permanent promotion system aimed at making more competitive permanent promotions and improving the system of quality control.

Section 4, clause (1). Qualifications for selection

This clause adds a specific statutory requirement that selection board recommendations for permanent promotion be based on ability and efficiency. This requirement is not specifically established as an existing requirement for permanent promotions, although consideration of these factors would be normally inferred. There is, however, a specific provision in present law requiring that temporary promotion be based, among other things, on ability and efficiency. The addition of this clause to the terms of reference for Army selection boards requiring due consideration for this basic factor would make more similar the present provisions of law on permanent and temporary promotions.

Clause (1) also contains an additional provision that officers recommended for promotion who are considered to be best qualified must also be considered fully qualified. This is desirable because it is technically possible, particularly when a small number of officers is being considered for promotion, that the selection board may select a certain number of the officers as best qualified without, however, the officers in fact being considered fully qualified. In effect this language requires that when officers are competing among themselves under the best qualified system, that all meet the minimum qualifications as presumed under the fully qualified system.

As an example of what might occur in the absence of this provision, there might be five majors being considered for promotion to permanent lieutenant colonel under the best qualified systems. Under current law, 80 percent of those considered, or four must be recommended for promotion. It is conceivable that not all of the four may be "fully qualified," despite the fact that they might be the "best qualified" of the five officers under consideration. This provision would avoid such an anomaly.

Section 4, clause (2). Improved promotion opportunity for members of the Army Nurse Corps and Army Medical Specialist Corps

Under existing law members of the Army Nurse Corps and Army Medical Specialist Corps may not be promoted to the next higher Regular grade of captain, and major, and lieutenant colonel prior to the completion of 7, 14, and 21 years of service, respectively. The

language in clause (2) deletes the present provision of law prohibiting their consideration for permanent promotion on the basis of vacancies in the regular structure. This amendment will, therefore, permit these officers to be eligible for promotion to fill regular vacancies.

Section 4, clauses (3), (4), and (5)

Clauses (3), (4), and (5) amend current law to provide that the dual system of using fully qualified or best qualified as a basis for promotion consideration, may be used only to the grade of captain (male). An exception is made in the case of female Army officers which continues the use of fully qualified as well as best qualified system for promotion to major. While clause (7) makes mandatory the use of the best qualified system for permanent promotions to the grade of major (male), service needs along with the limited number of vacancies for women in the upper ranks justify the continuation of the use of the fully qualified system for promotion to the permanent grade of major for these officers.

Section 3300 of title 10 presently authorizes the permanent promotion to the grade of captain, major, or lieutenant colonel on either a fully qualified or a best qualified basis.

Section 4, clause (6). Below the zone promotion to major for female officers

This clause in adding two new subsections to section 3300 authorizes selections for promotion from below the promotion zone of not more than 5 percent of the number of women captains who will be selected for promotion from within the zone to the permanent grade of major.

Subsection (d) contains further language noting that an officer not selected from below the zone will not be considered as having failed of selection for promotion.

This subsection also provides that the number of officers selected for promotion from the regular promotion zone and the number of officers selected for promotion from below the promotion zone when combined may not exceed the original total number authorized for selection for promotion. Without this provision it is possible that the number selected from below the zone would be in addition to the total number otherwise authorized by the Secretary.

Section 4, clause (7). Requirement of best qualified provision for promotion to major or lieutenant colonel

Clause (7) adds a new section 3300a to title 10 and provides as follows:

(a) When a Regular Army officer is considered by a selection board for promotion to Regular major or lieutenant colonel, the use of the best qualified system is required. It is further provided that the Secretary of the Army will specify for promotion not less than 80 percent of those being considered for the first time.

(b) With regard to the regular promotions of officers in the grade of captain and major to the permanent grade of major and lieutenant colonel, the Secretary of the Army may specify that not more than 5 percent of the officers may be selected from below those being considered within the statutory promotion zone for consideration to these grades. The clause further provides that those officers below the zone who were not selected for promotion would not be considered as having failed of selection.

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Under existing law there is no specified period of time which must be served in the permanent grade of captain and major before being considered for the next higher permanent grade. It is therefore true as a technical matter that officers could be selected from below the zone within a short period after their selection to their existing grade. The Army and Air Force do not plan such a liberal use of this provision. Its use would be restricted to those who for the most part are not too far behind their contemporaries within the zone insofar as promotion list service is concerned.

Section 4, clause (8). Separation of officers who have twice failed of promotion

This clause amends existing section 3303(d)(3) which deals with deferred officers. This clause provides that an officer who has twice failed of promotion shall be separated at any mutually agreeable time after the date the Secretary approves a report of the second selection board but not more than 6 months after that date.

The operation of existing law has produced situations where an individual selected for elimination must be kept on active duty for a minimum of 9 months and sometimes for a maximum of 21 months. The Comptroller General, moreover, has ruled that if the officer being eliminated requests separation for personal reasons at an earlier date than that now fixed by law he would lose his rights to severance pay as a result of his request for early separation. This result occurs because of the interpretation placed on existing provisions of law providing for the elimination of Regular officers 1 year and 30 days from the date on which they would have been promoted had they been selected the first time, and the fact that the Comptroller General has ruled that a twice-deferred individual is not otherwise entitled to severance pay until the completion of this period.

Section 4, clause (9). Below the zone promotions for Army Nurse Corps and Army Medical Specialist Corps to the grade of lieutenant colonel

Clause (9) authorizes selection from below a promotion zone of not more than 5 percent of the number of majors of the Army Nurse Corps and the Army Medical Specialist Corps specified for promotion to the permanent grade of lieutenant colonel. Failure to be selected from below the zone will not be considered as a passover.

Subsection (b) authorizes the promotion from below the promotion zone of not more than 5 percent of the number of majors specified for promotion to the permanent grade of lieutenant colonel. An officer who has not been recommended for promotion from below the zone will not be considered as having failed of selection for permanent promotion.

Subsection (c) provides that the number of officers selected for promotion from the regular promotion zone and the number of officers selected for promotion from below the promotion zone when combined may not exceed the original total number authorized for selection for promotion. Without this provision it is possible that the number selected from below the zone would be in addition to the total number otherwise authorized by the Secretary.

Section 4, clause (10). Authority for selection from below the zone for the grade of permanent colonel

Subsection (b) amends existing law by authorizing selections from below the regular promotion zone of officers for permanent promotion to colonel. Such selections may not exceed 5 percent of the number authorized for selection by the Secretary. An officer who has not been recommended for promotion from below the zone will not be considered as having failed of selection for permanent promotion.

Section 4, clause (11). Technical amendments

Clause (11) amends the section titles in the analysis in accordance with the new text.

Section 5. Deletion of references to seniority and age

Section 5 amends the existing law with respect to temporary promotions in the Army. Existing law states that temporary selections will be based on ability and efficiency with regard being given to seniority and age. This section deletes the language with respect to seniority and age. The new provision would make the standards identical for both permanent and temporary promotion.

Section 6. Retirement of Army officers who have failed twice of promotion

Section 6 amends section 3913 of title 10 (which provides for the retirement of officers with 20 years' service who have failed twice of promotion) to permit the retirement of an officer who has failed twice of promotion on a date mutually agreeable to him and his service, but no later than 6 months after the Secretary approves the selection board's report. Under current law he must be retained until 1 year and 30 days after the date on which he would have been promoted had he been selected for promotion by the first board that considered him.

Section 7. Promotion requirement for the Navy

Section 7 adds to existing Navy law the similar requirement established elsewhere in the bill with regard to the promotions being based on ability and efficiency. This section adds new language to existing Navy promotion law requiring that recommendations for promotion or for continuation on the active list be based on ability and efficiency.

Section 8. Early discharge of officers who have twice failed of selection in the Navy

Existing law requires that Regular Navy lieutenants (junior grade) and lieutenants and equivalent Marine Corps grades who have twice failed of selection shall be discharged on June 30 of the fiscal year of which they are twice failed. As much as 10 or 11 months may elapse under this requirement.

This section adds new language which gives the officer the option if he so requests of being discharged at any time during the fiscal year of which he has failed the second time. Many times the officer would desire to be discharged prior to the end of the fiscal year.

Section 9. Changes in promotion law

Section 9 in amending the current provisions applicable to Regular Air Force promotions, as indicated below, makes a number of changes in the permanent promotion system aimed at making more competitive permanent promotions and improving the system of quality control.

Section 9, clause (1). Qualifications for selection

This clause adds a specific statutory requirement that selection board recommendations for permanent promotion be based on ability and efficiency. This requirement for permanent promotions, although consideration of these factors would be normally inferred. There is, however, a specific provision in present law requiring that temporary promotion be based, among other things, on ability and efficiency. The addition of this clause to the terms of reference for Air Force selection boards requiring due consideration for this basic factor would make more similar the present provisions of law on permanent and temporary promotions.

Clause (1) also contains an additional provision that officers recommended for promotion who are considered to be best qualified must also be considered fully qualified. This is desirable because it is technically possible, particularly when a small number of officers is being considered for promotion, that the selection board may select a certain number of the officers as best qualified without, however, the officers in fact being considered fully qualified. In effect, this language requires that when officers are competing among themselves under the best qualified system, that all meet the minimum qualifications as presumed under the fully qualified system.

As an example of what might occur in the absence of this provision, there might be five majors being considered for promotion to permanent lieutenant colonel under the best qualified system. Under current law, 80 percent of those considered, or four, must be recommended for promotion. It is conceivable that not all of the four may be "fully qualified," despite the fact that they might be the "best qualified" of the five officers under consideration. This provision would avoid such an anomaly.

Section 9, clause (2). Improved promotion opportunity for members of the Air Force Nurses and Air Force Medical Specialists and below zone promotion to lieutenant colonel

Under existing law Air Force Nurses and Air Force Medical Specialists may not be promoted to the next higher regular grade of captain, major, and lieutenant colonel prior to the completion of 7, 14, and 21 years of service, respectively. The language in clause (2) deletes the present provision of law prohibiting their consideration for permanent promotion on the basis of vacancies in the regular structure. This amendment will, therefore, permit these officers to be eligible for promotion to fill regular vacancies. This will extend to women officers the same consideration and opportunity for promotion to fill authorized vacancies as is provided for male officers.

This clause authorizes the promotion from below the promotion zone of not more than 5 percent of the number of majors specified for promotion to the permanent grade of lieutenant colonel. An officer who has not been recommended for promotion from below the zone will not be considered as having failed of selection for permanent promotion.

Section 9, clauses (3), (4), and (5)

Clauses (3), (4), and (5) amend current law to provide that the dual system of using fully qualified or best qualified as a basis for promotion

consideration, may be used only to the grade of captain (male). An exception is made in the case of female Air Force officers which continues the use of fully qualified as well as best qualified system for promotion to major. While clause (7) makes mandatory the use of the best qualified system for permanent promotions to the grade of major (male), the service needs along with the limited number of vacancies for women and the upper ranks justify the continuation of the use of the fully qualified system for promotion to the permanent grade of major for these officers.

Section 8300 of title 10 presently authorizes the permanent promotion to the grade of captain, major, or lieutenant colonel on either a fully qualified or a best qualified basis.

Section 9, clause (6). Below the zone promotion to major for female officers.

This clause in adding two new subsections to section 3300 authorizes selections for promotion from below the promotion zone of not more than 5 percent of the number of women captains who will be selected for promotion from within the zone to the permanent grade of major.

Subsection (d) contains further language noting that an officer not selected from below the zone will not be considered as having failed of selection for promotion.

Subsection (e) provides that the number of officers selected for promotion from the regular promotion zone and the number of officers selected for promotion from below the promotion zone when combined may not exceed the original total number authorized for selection for promotion. Without this provision it is possible that the number selected from below the zone would be in addition to the total number otherwise authorized by the Secretary.

Section 9, clause (7). Requirement of best qualified provision for promotion to major or lieutenant colonel

Clause (7) adds a new section 8300a to title 10 and provides as follows:

(a) When a Regular Air Force officer is considered by a selection board for promotion to Regular major or lieutenant colonel, the use of the best qualified system is required. It is further provided that the Secretary of the Air Force will specify for promotion not less than 80 percent of those being considered for the first time.

(b) With regard to the regular promotions of officers in the grade of captain and major to the permanent grade of major and lieutenant colonel, the Secretary of the Air Force will specify that not more than 5 percent of the officers may be selected from below those being considered within the statutory promotion zone for consideration to these grades. The clause further provides that those officers below the zone who were not selected for promotion would not be considered as having failed of selection.

Under existing law there is no minimum specified period of time which must be served in the permanent grade of captain and major before being considered for the next higher permanent grade. It is therefore true as a technical matter that officers could be selected from below the zone within a short period after their selection to their existing grade. The Army and Air Force do not plan such a

liberal use of this provision. Its use would be restricted to those who for the most part are not too far behind their contemporaries within the zone insofar as promotion list service is concerned.

This subsection provides that the number of officers selected for promotion from the regular promotion zone and the number of officers selected for promotion from below the promotion zone when combined may not exceed the original total number authorized for selection for promotion. Without this provision it is possible that the number selected from below the zone would be in addition to the total number otherwise authorized by the Secretary.

The language of subsection (d) provides that the below-the-zone selection authority in the new section 8300a does not apply to certain officers whose designated branch is WAF (Women of the Air Force). This section would apply to female promotion list officers who perform certain professional functions, as enumerated in the reference to section 8067. The WAF officers excluded under this subsection are included elsewhere in the bill for the purposes of below-the-zone selections.

Section 9, clause (8). Separation of officers who have twice failed of promotion

This clause amends existing section 8303(d)(3) which deals with deferred officers. This clause provides that an officer who has twice failed of promotion shall be separated at any mutually agreeable time after the date the Secretary approves a report of the second selection board but not more than 6 months after that date.

The operation of existing law has produced situations where an individual selected for elimination must be kept on active duty for a minimum of 9 months and sometimes for a maximum of 21 months. The Comptroller General, moreover, has ruled that if the officer being eliminated requests separation for personal reasons at an earlier date than that now fixed by law he would lose his rights to severance pay as a result of his request for early separation. This result occurs because of the interpretation placed on existing provisions of law providing for the elimination of Regular officers 1 year and 30 days from the date on which they would have been promoted had they been selected the first time, and the fact that the Comptroller General has ruled that a twice-deferred individual is not otherwise entitled to severance pay until the completion of this period.

Section 9, clause (9). Authority for selection from below the zone for promotion to the grade of permanent colonel

Clause (9) authorizes the promotion from below the promotion zone of not more than 5 percent of the number of lieutenant colonels specified for promotion to the permanent grade of colonel. An officer who has not been recommended for promotion from below the zone will not be considered as having failed of selection for permanent promotion.

Subsection (b) amends existing law by authorizing selections from below the regular promotion zone of officers for permanent promotion to colonel. Such selections may not exceed 5 percent of the number authorized for selection by the Secretary.

Subsection (c) provides that the number of officers selected for promotion from the regular promotion zone and the number of offi-

cers selected for promotion from below the promotion zone when combined may not exceed the original total number authorized for selection for promotion. Without this provision it is possible that the number selected from below the zone would be in addition to the total number otherwise authorized by the Secretary.

Section 10. Deletion of references to seniority and age

Section 10 amends the existing law with respect to temporary promotions in the Air Force. Existing law states that temporary selections will be based on ability and efficiency with regard being given to seniority and age. The new provision would make the standards identical for both permanent and temporary promotion.

Section 11. Retirement of Air Force officers who have failed twice of promotion

Section 11 amends section 8913 of title 10 (which provides for the retirement of officers with 20 years' service who have failed twice of promotion) to permit the retirement of an officer who has failed twice of promotion on a date mutually agreeable to him and his service, but no later than 6 months after the Secretary approves the selection board's report. Under current law he must be retained until 1 year and 30 days after the date on which he would have been promoted had he been selected for promotion by the first board that considered him.

Section 12. Savings clause for contingency option elections

Section 12 is a savings clause that is designed to protect those rights granted the individual under existing law which might otherwise be adversely affected by the bill. Thus, under section 1431, the change or revocation of an election of an annuity is not effective if an officer retires within 5 years after the change or revocation. Since this bill would authorize the involuntary retirement of officers before they might otherwise be retired under existing law, the effectiveness of such a change or revocation might be negated by their early, involuntary retirement. Section 12 would preserve the change or revocation if made within 5 years before an officer would otherwise have been retired.

DEPARTMENTAL RECOMMENDATION

Printed below and hereby made a part of this record is a letter from the Department of Defense recommending this legislation.

THE SECRETARY OF DEFENSE,
Washington, April 20, 1959.

HON. RICHARD M. NIXON,
President of the Senate.

DEAR MR. PRESIDENT: There is enclosed a draft of proposed legislation to amend title 10, United States Code, to revise certain provisions relating to the promotion and involuntary retirement of officers of the Regular components of the Armed Forces, together with a sectional analysis thereof.

This proposal is a part of the Department of Defense legislative program for 1959 and it has been approved by the Bureau of the

Budget. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to enable the Armed Forces to meet more effectively the objective of a Regular officer corps of the highest quality in all ranks by: (1) more closely relating the retention of officers after 20 years of service who are serving in the permanent grades of lieutenant colonel and colonel, commander and captain to the requirements of the services, including the degree of contribution or productivity of the officer and the needs of the service rather than solely to a "guaranteed" number of years of service; (2) according increased recognition and incentive for outstanding ability and competence; (3) extending the application of the foregoing provisions to women officers on an equitable basis; and (4) expediting the separation from the service of officers who have been twice deferred from permanent promotion.

The proposed legislation is an important part of an integrated program of the Department of Defense to achieve and maintain a Regular officer force of the highest quality. As a part of this program, the Congress, on May 20, 1958, enacted Public Law 85-422, which modernized and improved the system of compensation for the uniformed services. The Department of Defense recognizes, however, that neither increase of pay alone nor a change in the pay system can accomplish the above-mentioned objective unless our officer personnel laws and regulations are equally responsive to the changing needs of the military services.

It is emphasized that the proposed legislation is not intended to cause, and will not be used for, the involuntary removal of Regular officers from the active list solely because of a reduction in the actual or authorized personnel strength of the service concerned. Rather it is intended that the removal of Regular officers from the active list will continue to be authorized only for the reasons and under the procedures and limitations now provided by law for such removal and as further provided by the proposed legislation.

Within the framework of existing law, the military services have been and are now vigorously carrying out sound, progressive, personnel programs and administrative measures designed to make career service more attractive and to improve further the quality of the career officer structure. Measurable progress has resulted from these programs and every effort will be continued to consolidate and improve the gains already made.

There remains, however, a need for added flexibility in some of the statutory provisions presently controlling the promotion, retention, and involuntary retirement of Regular officers.

Accordingly, the proposed legislation would amend title 10, United States Code, and would, in general, effect the following major changes in existing law:

ALL SERVICES

A. Majors, lieutenant colonels and colonels; lieutenant commanders, commanders, and captains; discretionary retirement after being twice considered but not recommended for promotion to next higher grade

This bill provides that the Secretary of the department concerned may convene a board of at least five general or flag officers to consider and recommend for continuation on the active list, all Regular officers serving in the permanent grade of lieutenant colonel or colonel, commander or captain, as the case may be, and major, in the case of officers of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps, or female officers of the Air Force, or lieutenant commander, in case of officers of the Navy Nurse Corps, who—

(a) have completed more than 20 years' total commissioned service; and

(b) have been considered two or more times, but not selected, for promotion to the next higher permanent grade.

The Secretary of the department concerned will determine the number of officers serving in the particular grade under review that the board may recommend for continuation. The board will recommend majors, lieutenant colonels, and colonels, and lieutenant commanders, commanders, and captains, for continuation in the number specified by the Secretary; however, with respect to officers in the grade of colonel or captain (U.S. Navy), the number specified by the Secretary may not be less than 80 percent of the number of colonels and captains to be considered for continuation on active duty by such board.

Each officer recommended for noncontinuation will, if the recommendation is approved by the Secretary, be retired on the first day of any month set by the Secretary, but not later than the first day of the seventh month after the date of the approval by the Secretary concerned.

The above provisions as to special boards for continuance or retirement will be permissive and in the discretion of the service concerned. Should the Secretary concerned desire to continue all such officers on the active list to meet the needs of the service, no board need be convened. In that case, such officers would be retained until they have reached the periods of service otherwise specified in law for their retirement.

B. Criteria for selection for promotion in all ranks

This bill provides with respect to permanent and temporary promotions in all services that the primary criteria for selection for promotion shall be ability and efficiency.

C. Amendment relating to separation of certain twice-deferred officers

This bill provides for the separation from the service of twice-deferred officers at: (1) in the case of officers of the Army or Air Force, any mutually agreeable time after the Secretary approves the board

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in *italics*, existing law in which no change is proposed is shown in *roman*):

TITLE 10, UNITED STATES CODE

CHAPTER 65.—RETIREMENT FOR LENGTH OF SERVICE

Sec.

1293. Twenty years or more: warrant officers.

1294. *Twenty years or more: regular majors, lieutenant colonels, and colonels; regular lieutenant commanders, commanders and captains.*

1305. Thirty years or more: regular warrant officers.

1315. Computation of retired pay: law applicable.

* * * * *

§. 1294. *Twenty years or more: regular majors, lieutenant colonels, and colonels; regular lieutenant commanders, commanders, and captains*

(a) Not more than once in each fiscal year, the Secretary of a military department may convene one or more boards, each consisting of at least five officers of a regular component of an armed force under the jurisdiction of that Secretary in grades above colonel or captain, as the case may be, to review the records of, and recommend for continuation on the active list, officers of that component on the active list in the following permanent grades who have at least 20 years of service computed under section 3927(a), 6387, 6388, or 8927(a) of this title, whichever applies, and who, in the case of officers of the Army or the Air Force or officers of the Navy in the Nurse Corps, have been considered at least twice but not recommended for promotion to the next higher permanent grade, or who, in the case of other officers of the Navy or officers of the Marine Corps, are considered as having failed of selection at least twice for promotion to the next higher grade and who have not been recommended for promotion to that grade:

(1) Colonel or captain, as the case may be.

(2) Lieutenant colonel or commander, as the case may be.

(3) Major, in the case of officers of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps or female officers of the Air Force (other than those designated under section 8067 (a)-(d) or (g)-(i) of this title), or lieutenant commander, in the case of officers of the Navy in the Nurse Corps.

(b) A board convened under this section shall recommend officers for continuation on the active list in the number specified by the Secretary. The Secretary may specify separate numbers for particular categories of officers. However, the number specified by him for officers in any category in the grade of colonel or captain, as the case may be, must be at least 80 percent of the officers in that category being considered.

(c) Except as provided by section 47a of title 5, if the Secretary approves the report of a board, he shall, not later than the first day of the seventh calendar month beginning after he approved that report, retire each officer who is considered but not recommended for continuation.

(d) Notwithstanding subsection (a), a selection board considering officers of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps may include an officer of the Regular Army in that corps who is senior in permanent grade to, and who outranks, any officer in that corps being considered by that board. A selection board considering corresponding officers of the Air Force under this section may, in the same manner, include an officer of the Regular Air Force. A selection board considering officers of the Navy in the Nurse Corps may, in the same manner, include an officer of the Regular Navy.

(e) So much of chapter 543 of this title as relates to alternate and staff corps members of selection boards, oaths of members, separate numbers for the various kinds of officers in the naval service, voting, and written reports apply to boards convened by the Secretary of the Navy under this section.

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CHAPTER 71.—COMPUTATION OF RETIRED PAY

* * * * *

§ 1401. Computation of retired pay

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Form- ula No.	For secs.—	(Col. 1) Take—	(Col. 2) Multiply by—	(Col. 3) Add—	(Col. 4) Subtract—
1	1201, 1204	Monthly basic pay ¹ of grade to which member is entitled under sec. 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher, increased for members credited with 2 or less years of service for basic pay purposes, by 6 percent. ⁴	As member elects—(1) $2\frac{1}{2}$ percent of years of service credited to him under sec. 1208 ³ ; or (2) the percentage of disability on date when retired.	-----	Excess over 75 percent of pay upon which computation is based.
2	1202, 1205	Monthly basic pay ¹ of grade to which member is entitled under sec. 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher, increased for members credited with 2 or less years of service for basic pay purposes, by 6 percent. ⁴	As member elects—(1) $2\frac{1}{2}$ percent of years of service credited to him under sec. 1208 ³ ; or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based.	Excess over 75 percent of pay upon which computation is based.
3	1331	Monthly basic pay ¹ of highest grade held satisfactorily by person at any time in armed forces.	$2\frac{1}{2}$ percent of years of service credited to him under sec. 1333.	-----	Excess over 75 percent of pay upon which computation is based.
4	564, 1255, 1263, 1293, 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.	$2\frac{1}{2}$ percent of years of service that may be credited to him under sec. 1405 ³ of this title. ³	-----	Excess over 75 percent of pay upon which computation is based.
"5	1294	Monthly basic pay to which member would be entitled if he were on active duty in his retired grade.	$2\frac{1}{2}$ percent of years of service that may be credited to him under section 1405 ³ or, if greater, in the case of an Army or Air Force officer, $2\frac{1}{2}$ percent of years of service credited to him under section 3927(a) or 3927(a), as the case may be. ³	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based.	Excess over 75 percent of pay upon which computation is based. ³

¹ Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be, and adjust to reflect later changes in applicable permanent rates.

² Compute at rates applicable on date when retired pay is granted.

³ Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than 6 months.

⁴ For an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, compute at the highest rates of basic pay applicable to him while he served in that office.

* * * * *

§ 1405. Years of service

For the purposes of section 1401 [formula 4] (*formulas 4 and 5*) 3888(1), 3927(b)(1), 3991 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6381(a)(2), 6383(c)(2), 6390(b)(2), 6391(h), 6394(g)(2), 6396(c)(2), 6398(b)(2), 6399(c)(2), 6400(b)(2), 8888(1), 8927(b)(1) or 8991 (formula B) of this title, the years of service of a member of the armed forces are computed by adding—

- (1) his years of active service;
- (2) the years of service credited to him under section 233(a)(7) of title 37;
- (3) the years of service not included in clause (1) or (2) with which he was entitled to be credited, on the day before the effective date of this section, in computing his basic pay; and
- (4) the years of service, not included in clause (1), (2) or (3) with which he would be entitled to be credited under section 1333 of this title, if he were entitled to retired pay under section 1331 of this title.

For the purpose of this section, a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

CHAPTER 73.—ANNUITIES BASED ON RETIRED OR RETAINER PAY

* * * * *

§ 1431. Election of annuity: members of armed forces

(a) This section applies to all members of the armed forces except—

- (1) members whose names are on a retired list or who are in the Retired Reserve;
- (2) Reserves on an inactive status list;
- (3) members assigned to the inactive National Guard;
- (4) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and
- (5) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired or retainer pay to which he may become entitled as a result of service in his armed force. The election must be made before he completes 18 years of service for which he is entitled to credit in the computation of his basic pay. However, if, because of military operations, he is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make the election before completing 18 years of that service, he may make the election within six months after he returns to the jurisdiction of his armed force.

(c) An election made under subsection (b) may be changed or revoked by the elector before his retirement or before he becomes entitled to retired or retainer pay. [However, unless made under section 1433, the change or revocation is not effective if he is retired or becomes entitled to retired or retainer pay within five years after the date of the change or revocation.] *Unless made under section 1433, the change or revocation is not effective if he is retired or becomes entitled to retired*

or retainer pay within five years after the date of the change or revocation. However, a change or revocation made by an officer who is retired under section 1294 of this title is effective if made at such a time that it would have been effective had he been retired on the earliest date prescribed for an officer of his kind by section 3915, 3916, 3921, 6376, 6377, 6379, 6396, 8915, 8916, or 8921, as the case may be, of this title. If he revokes the election, he may not change or withdraw the revocation.

(d) A person who was retired or granted retired or retainer pay before November 1, 1953, and who elected within 180 days after that date to receive a reduced amount of that pay to provide an annuity, may not revoke that election.

* * * * *

CHAPTER 335.—APPOINTMENTS IN THE REGULAR ARMY

Sec.

* * * * *

3300. Commissioned officers: promotion to captain[, major, or lieutenant colonel] or, in case of officers of Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps, major; selection board procedure.

3300a. Commissioned officers: promotion to major or lieutenant colonel; selection board procedure.

* * * * *

§ 3297. Selection boards

* * * * *

(d) Except as otherwise provided by law, promotion-list officers and brigadier generals of the Regular Army may be promoted to the regular grades of captain through major general only when recommended by a selection board. A recommendation for promotion must be made by the majority of the total membership of the board. *Such a recommendation shall be based upon ability and efficiency. Notwithstanding any other provision of law, a board that is to recommend officers for promotion whom it considers to be the best qualified may recommend only those officers whom it also considers to be fully qualified.*

* * * * *

§ 3299. Commissioned officers: promotion to captain, major, or lieutenant colonel

* * * * *

(c) Having in view the number of actual and anticipated vacancies on a promotion list in the regular grade of captain, major, or lieutenant colonel, the Secretary of the Army may direct a selection board to consider and recommend officers on that list for promotion to the next higher regular grade without regard to length of service. However, no officer may be considered for promotion under this section more than two years before the date on which it is anticipated that he will be promoted if recommended, and unless the same board considers all officers above him on that list who are not on a recommended list. [No officer of the Army Nurse Corps or Army Medical Specialist Corps may be promoted under this subsection.]

* * * * *

3300. Commissioned officers: promotion to captain [, major, or lieutenant colonel] or, in the case of officers of Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps, major; selection board procedure

(a) When promotion-list officers in the regular grade of first lieutenant [, captain, or major] or promotion-list officers of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps in the regular grade of captain are to be considered, under section 3299 of this title, by a selection board for promotion to the next higher regular grade to fill existing or anticipated vacancies, the Secretary of the Army may direct the board to—

(1) consider officers in the specified grade in the order of their seniority on the promotion list concerned;

(2) recommend those who are fully qualified for promotion;

(3) pass over those not so qualified; and

(4) continue this procedure until the number of officers specified by him is recommended.

(b) When a promotion-list officer in the regular grade of first lieutenant [, captain, or major] or a promotion-list officer of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps in the regular grade of captain must be considered under section 3299 of this title for promotion because of length of service, or because he is on a promotion list above an officer who must be considered for that reason, the Secretary may—

(1) furnish the board a list of officers to be considered for promotion to the grade concerned; and

(2) direct the board to recommend the officers on that list whom it considers fully qualified for promotion.

(c) Instead of the procedures set forth in subsection (a) or (b), the Secretary may furnish to the board a list of promotion-list officers to be considered and may direct it to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be the best qualified. However, the number prescribed by the Secretary for recommendation must be at least 80 percent of those listed for consideration.

(d) From promotion-list officers of the Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps, as the case may be, in the regular grade of captain who are not on a list of officers furnished by the Secretary to a selection board under subsection (c), the Secretary may furnish the board the names of additional officers, in order of seniority in regular grade. From those officers, the board may recommend for promotion to the regular grade of major a number of officers, whom it considers to be the best qualified, that is not more than 5 percent of the number specified by the Secretary under subsection (c) for promotion. If 5 percent of that number is less than one officer, the board may recommend one officer under this subsection. An officer who is not on a list of officers furnished to a selection board under subsection (c), and who is on a promotion list above an officer who is recommended for promotion under this subsection, shall be treated as if consideration under this subsection were not consideration for promotion.

(e) The number of officers that may be recommended for promotion under subsection (c) and (d) may not be more than the number specified by the Secretary for promotion under subsection (c).

§ 3300a. *Commissioned officers: promotion to major or lieutenant colonel; selection board procedure*

(a) When promotion-list officers in the regular grade of captain or major are to be considered, under section 3299 of this title, by a selection board for promotion to the next higher regular grade, the Secretary of the Army shall furnish to the board a list of promotion-list officers, in order of seniority in regular grade, to be considered and shall direct it to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be best qualified. However, the number prescribed by the Secretary for recommendation must be at least 80 percent of those listed for consideration for the first time.

(b) From promotion-list officers in the regular grade of captain or major, as the case may be, who are not on a list of officers furnished by the Secretary to a selection board under subsection (a), the Secretary may furnish the board the names of additional officers, in order of seniority in regular grade. From those officers, the board may recommend for promotion to the next higher regular grade a number of officers, whom it considers to be the best qualified, that is not more than 5 percent of the number specified by the Secretary under subsection (a) for promotion. If 5 percent of that number is less than one officer, the board may recommend one officer under this subsection. An officer who is not on a list of officers furnished to a selection board under subsection (a), and who is on a promotion list above an officer who is recommended for promotion under this subsection, shall be treated as if consideration under this subsection were not consideration for promotion.

(c) The number of officers that may be recommended for promotion under this section may not be more than the number specified by the Secretary for promotion under subsection (a).

(d) This section does not apply to the promotion of promotion-list officers of the Army Nurse Corps or the Army Medical Specialist Corps to the regular grade of major or lieutenant colonel or to the promotion of promotion-list officers of the Women's Army Corps to the regular grade of major.

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§ 3303. *Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel*

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(d) A deferred officer who is not recommended by the next selection board considering officers of his grade and promotion list shall—

- (1) if he is eligible, be retired under section 3913 of this title;
- (2) if he is not eligible for retirement under section 3913 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date when he would have been retired under section 3913 of this title if he were eligible; or
- (3) if he is not eligible for retirement under section 3913 of this title or any other provision of law, be honorably discharged on [the date he would have been retired under section 3913 of this title if he were eligible] such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Army, but not later than the first day of the seventh month after the

Secretary approves the report of that board, with the severance pay computed by multiplying his years of service, but not more than 12 computed under section 3927(a) of this title, by two months' basic pay of the grade in which he is serving on the date of his discharge.

* * * * *

§ 3304. Commissioned officers; Army Nurse Corps and Army Medical Specialist Corps: promotion to lieutenant colonel or colonel

(a) Having in view the number of actual and anticipated vacancies in the promotion lists of the Army Nurse Corps or the Army Medical Specialist Corps in the regular grade of lieutenant colonel and the number of officers desired in that grade on the applicable promotion list, the Secretary of the Army shall furnish to selection boards lists of all promotion-list officers in the regular grade of major who have completed at least 21 years of service with which they are entitled to be credited for promotion and all promotion-list officers in that grade whose names appear on that promotion list above the name of any officer who has completed that service, in the order in which their names appear on that promotion list. The Secretary may also furnish to the boards the names of promotion-list officers in the regular grade of major who have not completed 21 years of service creditable for promotion, in the order in which their names appear on that promotion list. He shall direct the boards to recommend for promotion to lieutenant colonel, a number prescribed by him, but not in excess of the number of promotions anticipated to be made to that grade within the next two years. The Secretary may not furnish the name of any officer to a board unless he furnishes to it the names of all officers above that officer on the promotion list who are not on a recommended list for promotion to that regular grade. The board shall recommend the prescribed number of those officers whom it considers to be the best qualified.

(b) *From promotion-list officers of the Army Nurse Corps or the Army Medical Specialist Corps, as the case may be, in the regular grade of major who are not on a list of officers furnished by the Secretary to a selection board under subsection (a), the Secretary may furnish the board the names of additional officers, in order of seniority in regular grade. From those officers, the board may recommend for promotion to the regular grade of lieutenant colonel a number of officers, whom it considers to be the best qualified, that is not more than 5 percent of the number specified by the Secretary under subsection (a) for promotion. If 5 percent of that number is less than one officer, the board may recommend one officer under this subsection.*

(c) *The number of officers that may be recommended for promotion under subsections (a) and (b) may not be more than the number specified by the Secretary for promotion under subsection (a).*

[(b)] (d) Having in view the number of actual and anticipated vacancies in the promotion lists of the Army Nurse Corps or the Army Medical Specialist Corps in the regular grade of colonel and the number of officers desired in that grade on the applicable promotion list, the Secretary of the Army shall furnish to selection boards lists of all promotion-list officers in the regular grade of lieutenant colonel (except those officers who would not be eligible for nomination

by reason of [subsection (d)] *subsection (f)* in the order in which their names appear on that promotion list. He shall direct the boards to recommend for promotion to the grade of colonel a number prescribed by him but not in excess of the number of promotions anticipated to be made to that grade within the next two years. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that regular grade. The board shall recommend the prescribed number of those officers whom it considers to be best qualified.

[(c)] (e) The names of officers recommended for promotion to the regular grade of lieutenant colonel or colonel shall be entered at the foot of, and carried on, the appropriate permanent recommended list for promotion to those grades in the same order among themselves as of the applicable promotion list. Officers shall be promoted in that order when there is a vacancy in those grades for that list. A vacancy in those grades may be filled at any time. It is not mandatory that the authorized numbers be maintained in the regular grades of lieutenant colonel or colonel on a promotion list.

[(d)] (f) An officer must complete at least one year of service in the regular grade of lieutenant colonel before being nominated for promotion to the regular grade of colonel.

§ 3305. Commissioned officers other than officers of the Army Nurse Corps and the Army Medical Specialist Corps; promotion to colonel

(a) Having in view the number of actual and anticipated vacancies in any promotion list in the regular grade of colonel and the number of officers desired in that grade on that promotion list, the Secretary of the Army shall furnish to selection boards lists of officers in the regular grade of lieutenant colonel, in order of seniority in regular grade, to be considered by those boards. The Secretary may not furnish the name of any officer to the board unless he furnishes to it the names of all officers above that officer on that promotion list who are not on a recommended list. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of colonel. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The board shall recommend the prescribed number of those officers whom it considers to be best qualified. No officer of the Army Nurse Corps or Army Medical Specialist Corps may be promoted under this section.

(b) *From promotion-list officers in the regular grade of lieutenant colonel who are not on a list of officers furnished by the Secretary to a selection board under subsection (a), the Secretary may furnish the board the names of additional officers, in order of seniority in regular grade. From those officers, the board may recommend for promotion to the next higher regular grade a number of officers, whom it considers to be the best qualified, that is not more than 5 percent of the number specified by the Secretary under subsection (a) for promotion. If 5 percent of that number is less than one officer, the board may recommend one officer under this subsection.*

(c) *The number of officers that may be recommended for promotion under this section may not be more than the number specified by the Secretary under subsection (a) for promotion.*

[(b)] (d) Whenever the Secretary considers that the number of officers in the regular grade of colonel in any of the branches on the Army promotion list is or may become seriously unbalanced, he may direct that, of the officers recommended, prescribed numbers be recommended for service in specified branches.

[(c)] (e) The names of officers recommended for promotion to the regular grade of colonel shall be entered at the foot of, and carried on, the appropriate permanent recommended list for promotion to that grade in the same order among themselves as on the applicable promotion list. Officers shall be promoted in that order when there is a vacancy in that grade for that list. A vacancy in that grade may be filled at any time. It is not mandatory that the authorized numbers be maintained in the grade of colonel on any promotion list.

[(d)] (f) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of colonel, to the number directed to be recommended, may be prescribed by the Secretary.

[(e)] (g) No officer may be considered for promotion to the regular grade of colonel more than two years before the date on which it is anticipated that he will be promoted if recommended.

[(f)] (h) An officer must complete at least one year of service in the regular grade of lieutenant colonel before being nominated for promotion to the regular grade of colonel.

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CHAPTER 339.—TEMPORARY APPOINTMENTS

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§ 3442. Commissioned officers; regular and reserve components: appointment in higher grade

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(c) Subject to subsections (a) and (b), a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. Under regulations to be prescribed by the Secretary, appointments made under this subsection shall be made on a fair and equitable basis. Selections shall be based upon ability and efficiency [with regard being given to seniority and age].

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CHAPTER 367.—RETIREMENT FOR LENGTH OF SERVICE

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§ 3913. Twenty years or more: deferred officers not recommended for promotion

(a) A deferred officer who is not recommended for promotion under section 3303(c) of this title, or an officer who is found disqualified for promotion under 3302(f) of this title, shall, if he has at least 20 years of service computed under section 3927(a) of this title, be retired, except as provided by section 47a of title 5, [one year and 30 days after the earlier of the following dates:

(1) The date of appointment to the grade concerned of the first officer junior to him on the list considered by the first selection board.

(2) The date on which he would have completed, for promotion purposes, 7, 14, or 21 years of service, if he is in the grade of first lieutenant, captain, or major, as the case may be, had his years of service not been reduced under section 3303(b) of this title. *on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Army, but not later than the first day of the seventh month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned.*

(b) Unless sooner retired or separated under another provision of law, a deferred officer who is not recommended for promotion under section 3303(c) of this title, or an officer found disqualified for promotion under subsection (a) of this section or any other provision of law, but is within two years of becoming entitled to retirement under subsection (a) of some other provision of law, shall be retained on the active list in his regular grade until *[so entitled to retire] the date he completes 20 years of service computed under section 3927(a) of this title, or the first day of the seventh month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned, whichever is later, and then retired.*

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CHAPTER 543.—SELECTION BOARDS

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§ 5707. Officers to be recommended for promotion or continuation

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(i) *Recommendations for promotion or for continuation on the active list shall be based upon ability and efficiency.* No officer may be recommended for promotion or for continuation on the active list unless he receives the recommendation of at least two-thirds of the acting members of the board concerned. However, a board composed of five acting members or less may so recommend an officer upon the concurrence of a majority of its members.

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CHAPTER 573.—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH

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§ 6382. Regular Navy, lieutenants and lieutenants (junior grade); Regular Marine Corps, captains and first lieutenants: discharge for failures of selection for promotion; severance pay

(a) Each officer on the active list of the Navy serving in the grade of lieutenant except an officer in the Nurse Corps, and each officer on the active list of the Marine Corps serving in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time. *However, if he so requests, he may be honorably discharged at any time during that fiscal year.*

(b) Each officer on the active list of the Navy serving in the grade of lieutenant (junior grade), except an officer of the Nurse Corps, and each officer on the active list of the Marine Corps serving in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time. *However, if he so requests, he may be honorably discharged at any time during that fiscal year.*

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§ 6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired or severance pay

* * * * *

(d) Each officer designated for limited duty on the active list of the Navy serving in the grade of lieutenant and each officer designated for limited duty on the active list of the Marine Corps serving in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time. *However, if he so requests, he may be honorably discharged at any time during that fiscal year.*

(e) Each officer designated for limited duty on the active list of the Navy serving in the grade of lieutenant (junior grade) and each officer designated for limited duty on the active list of the Marine Corps serving in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time. *However, if he so requests, he may be honorably discharged at any time during that fiscal year.*

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§ 6384. Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge for unsatisfactory performance of duty; severance pay; reversion of limited duty officers to prior status

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(b) Each officer on the active list of the Navy or the Marine Corps whose name is reported under this section shall, subject to subsection (d), be honorably discharged from the naval service on June 30 of the fiscal year in which his name is so reported, *or, in the discretion of the Secretary of the Navy, on any earlier date if the officer so requests*, with a lump-sum payment computed on the basis of two months' basic pay received at the time of discharge multiplied by the number of years of service, but the payment may not be more than two years' basic pay. The acceptance of a lump-sum payment under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received payment under this section, unless the total deductions equal the amount of the lump-sum payments.

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§ 6401. Regular Navy, women lieutenants; Regular Marine Corps, women captains: discharge for length of service; severance pay

(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of lieutenant and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of captain shall be honorably discharged on June 30 of the fiscal year in which—

- (1) she is not on a promotion list; and
- (2) she has completed 13 years of active commissioned service in the Navy or in the Marine Corps.

However, if she so requests, she may be honorably discharged at any time during that fiscal year.

* * * * *

§ 6402. Regular Navy, women lieutenants (junior grade); Regular Marine Corps, women first lieutenants: discharge for length of service; severance pay

(a) Each woman officer on the active list of the Navy, appointed under section 5590 of this title, who holds a permanent appointment in the grade of lieutenant (junior grade) and each woman officer on the active list of the Marine Corps who holds a permanent appointment in the grade of first lieutenant shall be honorably discharged on June 30 of the fiscal year in which—

- (1) she is not on a promotion list; and
- (2) she has completed seven years of active commissioned service in the Navy or in the Marine Corps.

However, if she so requests, she may be honorably discharged at any time during that fiscal year.

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CHAPTER 835.—APPOINTMENTS IN THE REGULAR AIR FORCE

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Sec.

8300. Commissioned officers: promotion to captain [, major, or lieutenant colonel] or, in the case of certain female officers, major; selection board procedure.

8300a. Commissioned officers: promotion to major or lieutenant colonel; selection board procedure.

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§ 8297. Selection boards

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(d) Except as otherwise provided by law, promotion-list officers and brigadier generals of the Regular Air Force may be promoted to the regular grades of captain through major general only when recommended by a selection board. A recommendation for promotion must be made by the majority of the total membership of the board. *Such a recommendation shall be based upon ability and efficiency. Notwithstanding any other provision of law, a board that is to recommend officers for promotion whom it considers to be the best qualified may recommend only those officers whom it also considers to be fully qualified.*

* * * * *

§ 8299. Commissioned officers: promotion to captain, major, or lieutenant colonel

(a) Promotion-list officers shall be promoted to the regular grades of captain, major, and, except as provided in subsection (f) [or (g)], (g), or (h), lieutenant colonel, under subsections (b) and (c), or eliminated from the active list under section 8303 of this title.

(b) Without regard to vacancies, each promotion-list officer whose regular grade is first lieutenant, captain, or major shall be considered by a selection, board for promotion to the next higher regular grade, far enough in advance of the date on which he will complete 7, 14, or 21 years of service with which he is entitled to be credited for promotion, as the case may be, that if recommended, he made be promoted on the date on which he will complete that service.

(c) Having in view the number of actual and anticipated vacancies on a promotion list in the regular grade of captain, major, or lieutenant colonel, the Secretary of the Air Force may direct a selection board to consider and recommend officers on that list for promotion to the next higher regular grade without regard to length of service. However, no officer may be considered for promotion under this section more than two years before the date on which it is anticipated that he will be promoted if recommended, and unless the same board considers all officers above him on that list who are not on a recommended list. [This subsection does not apply to the promotion of Air Force nurses or medical specialists to the grade of captain, major, or lieutenant colonel.]

(d) The names of promotion-list officers recommended for promotion under this section and section 8301 of this title shall be carried on permanent recommended lists of their grade and promotion list in the same order among themselves as on the applicable promotion list, and they shall be promoted in that order. A promotion may be made whenever there is a vacancy, but it is not mandatory that the authorized numbers be maintained in any grade on any promotion list.

(e) Whenever an officer is promoted under subsection (b), all officers in the same grade and on the same promotion list whose names are on the recommended list above that of the officer who must be promoted because of length of service shall be promoted at the same time and shall retain among themselves their existing seniority.

(f) Female promotion-list officers, other than those designated under section 8067 of this title to perform professional functions, may be promoted to the regular grade of lieutenant colonel only to fill vacancies in the number authorized by the Secretary for that category, and only when recommended by a selection board under regulations to be prescribed by the Secretary. Such a female promotion-list officer whose regular grade is major may not be eliminated from the active list because of failure of selection for promotion to the regular grade of lieutenant colonel.

(g) Air Force nurses and medical specialists may be promoted to the regular grade of lieutenant colonel in the manner prescribed in section 8305 of this title to fill vacancies in the number authorized for that grade by the Secretary. Whenever a selection board is considering Air Force nurses or medical specialists for promotion to the regular grade of lieutenant colonel, the Secretary shall furnish to the board the name of each Air Force nurse or medical specialist, as the case may be, in the regular grade of major who has completed at

least 21 years of service with which she is entitled to be credited for promotion purposes, and the names of all of those officers in that regular grade whose names appear on the applicable promotion list above the name of any officer who has completed at least 21 years of that service. In addition, he may furnish to the board, in the order in which their names appear on the applicable promotion list, the names of any other Air Force nurses or medical specialists, as the case may be, in the regular grade of major who have not completed 21 years of that service.

(h) *From Air Force nurses or medical specialists, as the case may be, in the regular grade of major who are not on a list of officers furnished by the Secretary to a selection board under subsection (g), the Secretary may furnish the board the names of additional officers, in order of seniority in regular grade. From those officers, the board may recommend for promotion to the regular grade of lieutenant colonel a number of officers, whom it considers to be the best qualified, that is not more than 5 percent of the number specified by the Secretary under subsection (g) for promotion. If 5 percent of that number is less than one officer, the board may recommend one officer under this subsection.*

(i) *The number of officers that may be recommended for promotion under subsections (g) and (h) may not be more than the number specified by the Secretary for promotion under subsection (g).*

(j) [(h)] A promotion-list officer who has been twice considered and not recommended for promotion to any one regular grade may not again be considered for promotion under this section. This does not apply to officers covered by subsection (f).

§ 8300. Commissioned officers: promotion to captain [, major, or lieutenant colonel] or, in the case of certain female officers, major; selection board procedure.

(a) When promotion-list officers in the regular grade of first lieutenant [, captain, or major] or female promotion-list officers (other than those designated under section 8067 (a)-(d) or (g)-(i) of this title) in the regular grade of captain are to be considered, under section 8299 of this title, by a selection board for promotion to the next higher regular grade to fill existing or anticipated vacancies, the Secretary of the Air Force may direct the board to—

- (1) consider officers in the specified grade in the order of their seniority on the promotion list concerned;
- (2) recommend those who are fully qualified for promotion;
- (3) pass over those not so qualified; and
- (4) continue this procedure until the number of officers specified by him is recommended.

(b) When a promotion-list officer in the regular grade of first lieutenant [, captain, or major] or a female promotion-list officer (other than one designated under section 8067 (a)-(d) or (g)-(i) of this title) in the regular grade of captain must be considered under section 8299 of this title for promotion because of length of service, or because he is on a promotion list above an officer who must be considered for that reason, the Secretary may—

- (1) furnish the board a list of officers to be considered for promotion to the grade concerned; and
- (2) direct the board to recommend the officers on that list whom it considers fully qualified for promotion.

(c) Instead of the procedures set forth in subsection (a) or (b), the Secretary may furnish to the board a list of promotion-list officers to be considered and may direct it to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be the best qualified. However, the number prescribed by the Secretary for recommendation must be at least 80% of those listed for consideration.

[(d) This section does not apply to the promotion of Air Force nurses or medical specialists to the regular grade of lieutenant colonel.]

(d) From female promotion-list officers (other than those designated under section 8067 (a)-(d) or (g)-(i) of this title) in the regular grade of captain who are not on a list of officers furnished by the Secretary to a selection board under subsection (c), the Secretary may furnish the board the names of additional officers, in order of seniority in regular grade. From those officers, the board may recommend for promotion to the regular grade of major a number of officers, whom it considers to be the best qualified, that is not more than 5 percent of the number specified by the Secretary under subsection (c) for promotion. If 5 percent of that number is less than one officer, the board may recommend one officer under this subsection. An officer who is not on a list of officers furnished to a selection board under subsection (c), and who is on a promotion list above an officer who is recommended for promotion under this subsection, shall be treated as if consideration under this subsection were not consideration for promotion.

(e) The number of officers that may be recommended for promotion under subsections (c) and (d) may not be more than the number specified by the Secretary for promotion under subsection (e).

§ 8300a. Commissioned officers: promotion to major or lieutenant colonel; selection board procedure

(a) When promotion-list officers in the regular grade of captain or major are to be considered, under section 8299 of this title, by a selection board for promotion to the next higher regular grade, the Secretary of the Air Force shall furnish to the board a list of promotion-list officers, in order of seniority in regular grade, to be considered and shall direct it to recommend a number specified by him for promotion. The board shall recommend those officers whom it considers to be the best qualified. However, the number prescribed by the Secretary for recommendation must be at least 80 percent of those listed for consideration for the first time.

(b) From promotion-list officers in the regular grade of captain or major, as the case may be, who are not on a list of officers furnished by the Secretary to a selection board under subsection (a), the Secretary may furnish the board the names of additional officers, in order of seniority in regular grade. From those officers, the board may recommend for promotion to the next higher regular grade a number of officers, whom it considers to be the best qualified, that is not more than 5 percent of the number specified by the Secretary under subsection (a) for promotion. If 5 percent of that number is less than one officer, the board may recommend one officer under this subsection. An officer who is not on a list of officers furnished to a selection board under subsection (a), and who is on a promotion list above an officer who is recommended for promotion under this subsection, shall be treated as if consideration under this subsection were not consideration for promotion.

(c) The number of officers that may be recommended for promotion under this section may not be more than the number specified by the Secretary for promotion under subsection (a).

(d) *This section does not apply to the promotion of female promotion-list officers (other than those designated under section 8067 (a)-(d) or (g)-(i) of this title) to the regular grade of major or to the promotion of female promotion-list officers designated under section 8067 (e) or (f) of this title to the regular grade of lieutenant colonel.*

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§ 8303. Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel

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(d) A deferred officer who is not recommended by the next selection board considering officers of his grade and promotion list shall—

- (1) if he is eligible, be retired under section 8913 of this title;
- (2) if he is not eligible for retirement under section 8913 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date when he would have been retired under section 8913 of this title if he were eligible; or
- (3) if he is not eligible for retirement under section 8913 of this title or any other provision of law, be honorably discharged on [the date he would have been retired under section 8913 of this title if he were eligible] *such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Air Force, but not later than the first day of the seventh month after the Secretary approves the report of that board, with severance pay computed by multiplying his years of service, but not more than 12, computed under section 8927(a) of this title, by two months' basic pay of the grade in which he is serving on the date of his discharge.*

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§ 8305. Commissioned officers: promotion to colonel

(a) Having in view the number of actual and anticipated vacancies in any promotion list in the regular grade of colonel and the number of officers desired in that grade on that promotion list, the Secretary of the Air Force shall furnish to selection boards lists of officers in the regular grade of lieutenant colonel, in order of seniority in regular grade, to be considered by those boards. The Secretary may not furnish the name of any officer to the board unless he furnishes to it the names of all officers above that officer on that promotion list who are not on a recommended list. He shall direct the boards to recommend a number prescribed by him for promotion to the grade of colonel. The list furnished may not contain the name of any officer who is on a recommended list for promotion to that grade. The board shall recommend the prescribed number of those officers whom it considers to be the best qualified.

(b) *From promotion-list officers in the regular grade of lieutenant colonel who are not on a list of officers furnished by the Secretary to a selection board under subsection (a), the Secretary may furnish the board the names of additional officers, in order of seniority in regular grade. From those officers, the board may recommend for promotion to the next higher regular grade a number of officers, whom it considers to be the best qualified, that is not more than 5 percent of the number specified by the Secretary for promotion under subsection (a). If 5 percent of that number is less than one officer, the board may recommend one officer under this subsection.*

(c) *The number of officers that may be recommended for promotion under this section may not be more than the number specified by the Secretary under subsection (a) for promotion.*

(e) [(b)] Whenever the Secretary considers that there are or will be too few officers with special qualifications, in the grade of colonel on the Air Force promotion list, he may direct that a specified number of the officers to be recommended for promotion to the regular grade of colonel be officers with those qualifications.

(e) [(c)] The names of officers recommended for promotion to the regular grade of colonel shall be entered at the foot of, and carried on, the appropriate permanent recommended list for promotion to that grade in the same order among themselves as on the applicable promotion list. Officers shall be promoted in that order when there is a vacancy in that grade for that list. A vacancy in that grade may be filled at any time. It is not mandatory that the authorized numbers be maintained in the grade of colonel on any promotion list.

[(d)] (f) The ratio of the number of officers on any promotion list who are named for consideration for promotion to the regular grade of colonel, to the number directed to be recommended, may be prescribed by the Secretary.

[(e)] (g) No officer may be considered for promotion to the regular grade of colonel more than two years before the date on which it is anticipated that he will be promoted if selected.

[(f)] (h) An officer must complete at least one year of service in the regular grade of lieutenant colonel before being nominated for promotion to the regular grade of colonel.

[(g)] (i) Air Force nurses and medical specialists may be promoted under this section only to fill vacancies in the number authorized for that grade by the Secretary.

[(h)] (j) This section does not apply to female officers on the Air Force promotion list who are not designated under section 0867 of this title.

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CHAPTER 839.—TEMPORARY APPOINTMENTS

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§ 8442. Commissioned officers; regular and reserve components: appointment in higher grade

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(c) Subject to subsection (a) and (b), a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. Under regulations to be prescribed by the Secretary, appointments made under this subsection shall be made on a fair and equitable basis. Selections shall be based upon ability and efficiency [with regard being given to seniority and age].

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CHAPTER 867.—RETIREMENT FOR LENGTH OF SERVICE

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§ 8913. Twenty years or more: deferred officers not recommended for promotion

(a) A deferred officer who is not recommended for promotion under section 8303(c) of this title, or an officer who is found disqualified for promotion under section 8302(f) of this title, shall, if he has at least 20 years of service computed under section 8927(a) of this title, be retired, except as provided by section 47a of title 5, [one year and 30 days after the earlier of the following dates:

[(1) The date of appointment to the grade concerned of the first officer junior to him on the list considered by the first selection board.

[(2) The date on which he would have completed, for promotion purposes, 7, 14, or 21 years of service, if he is in the grade of first lieutenant, captain, or major, as the case may be, had his years of service not been reduced under section 8303(b) of this title.]

on such date as may be requested by him and approved under regulations to be prescribed by the Secretary of the Air Force, but not later than the first day of the seventh month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned.

(b) Unless sooner retired or separated under another provision of law, a deferred officer who is not recommended for promotion under section 8303(c) of this title, or an officer found disqualified for promotion under section 8302(f) of this title, who is not eligible for retirement under subsection (a) of this section or any other provision of law, but is within two years of becoming entitled to retirement under subsection (a) or some other provision of law, shall be retained on the active list in his regular grade until [so entitled to retire,] *the date he completes 20 years of service computed under section 8927(a) of this title, or the first day of the seventh month after the Secretary approves the report of the last board that did not recommend him for promotion to the grade concerned, whichever is later, and then retired.*



